S.1726

OLC 74-1026

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

16 MAY 1974

Mr. Wilfred H. Rommel
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Rommel:

Enclosed is a proposed report to Chairman Ervin, Senate Committee on Government Operations, in response to a request for our recommendations on S. 2451 and S. 1726, which establish guidelines and limitations for the classification of information and the disclosure of such information to the Congress and the public.

Advice is requested as to whether there is any objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

SIGNED

George L. Cary
Legislative Counsel

Enclosure

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CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

Honorable Sam J. Ervin, Jr., Chairman
Senate Committee on Government Operations
United States Senate
Washington, D. C. 20510

Dear Chairman Ervin:

This is in response to your requests for our views on two substantially similar bills, S. 2451 and S. 1726, which establish guidelines and limitations for the classification of information and the disclosure of such information to the Congress and the public.

S. 2451 and S. 1726 establish a statutory program for the classification, declassification, and protection of Government information by amending the Freedom of Information Act (5 U.S.C.A. 552). Except for Atomic Energy Restricted Data, which is exempt under S. 1726, all classified information, including that involving Intelligence Sources and Methods, would be affected.

The principal role of the Central Intelligence Agency is to provide the President and the National Security Council foreign intelligence information. The value of such information depends heavily upon productive sources and effective methods of collection and analysis which would be seriously jeopardized by unauthorized disclosure. It is for this reason, I believe, that the Congress directed in the National Security Act of 1947, as amended (50 U.S.C.A. 403) Section 102(d)(3), that:

> "...the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure."

Pursuant to the Freedom of Information Act and Executive Order 11652, entitled "Classification and Declassification of National

Security Information and Material," there is a program within this Agency for handling requests for information and the declassification of information. Most of our information is classified, however, and exempted from public inspection by the very terms of the Freedom of Information Act and the Executive Order.

The amendments to the Act proposed by S. 1726 and S. 2451 provide that:

a. (S. 1726) Any person may bring court action and require the court to review the sufficiency of the classification of any material which an agency exempts from declassification (noncompliance with a court order subjects the agency head to contempt).

b. Classified documents are automatically declassified unless the President or the Agency head personally justifies for each document, in writing, that the information requires continued protection.

c. The Comptroller General is granted broad authority to oversee and inspect classification programs within the Executive, and to investigate alleged overclassification.

d. All information and material requiring protection is identified by only one designation, "Secret Defense Data."

e. The names and addresses of all persons who classify information must be provided quarterly to the Congress and to the Comptroller General.

The provisions of S. 1726 raise questions of possible statutory conflict. The Director of Central Intelligence is held responsible by statute to protect Intelligence Sources and Methods from unauthorized disclosure, but under the bill his determination could be overridden with resulting damage to such Sources and Methods. An intelligence

document can reveal Intelligence Sources and Methods even though the substantive information conveyed is not sensitive, per se, if another power can deduce from it how it came into our possession. A request for such a document could require the Agency to justify its classification by revealing the very Intelligence Sources and Methods the Director of Central Intelligence is obligated to protect. Furthermore, under the bill, anyone, regardless of citizenship or nationality, can force court action by simple petition, posing the danger of revealing Intelligence Sources and Methods even to a foreigner.

The Central Intelligence Agency, as the central repository for all foreign intelligence information, originates, receives and files hundreds of thousands of documents yearly. Under S. 2451 and S. 1726, these documents would be subject to automatic declassification two years after classification unless the agency head personally justifies in writing the continued protection of each document. It would be impossible for the Director to review personally every classified document, yet the review is vital and cannot be waived. Apart from the obvious security problems, this Agency and I personally simply could not operate under this arrangement.

The broad authority granted the Comptroller General to oversee the Agency's classification program would also raise a question of conflict with the Director's statutory responsibility to protect Intelligence Sources and Methods.

The application of a single designation, "Secret Defense Data," for all material and information requiring protection, would make it extremely difficult to protect especially sensitive information deserving of distinctive markings as permitted under Executive Order 11652. It is not clear what purpose would be served by limiting classification to one designation as proposed. This designation and its definition would also exclude many matters whose classification is of importance to our foreign relations and national welfare, but not strictly to our national defense.

The requirement to furnish the names and addresses of all persons who have authority to classify information directly conflicts with Section 6 of the Central Intelligence Agency Act of 1949 (50 U.S.C.A. 403g), which exempts the Agency from the provision of any law requiring the disclosure of the names of its employees. S. 1726 in Title V protects the identity of persons furnishing information to the media whether or not published and regardless of any possible criminality involved. This provision could encourage the disclosure of classified information.

In view of the above considerations, we oppose the enactment of S. 1726 and S. 2451 in their present form. If either bill receives favorable consideration by your Committee, it is requested that Intelligence Sources and Methods be specifically exempted, in the same manner as Atomic Energy Restricted Data in S. 1726.

The Office of Management and Budget advises there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

[redacted] STATINTL

W. E. Colby
Director